IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1037 of 2007

Sakthivel .. Petitioner

Vs

1. The State of Tamil Nadu,
   rep. by its Secretary,
   Prohibition and Excise Department
   Fort St. George, Chennai-9.

2. The District Magistrate
   and District Collector,
   Namakkal District
   Namakkal. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Ms.B.S.Ajeetha
For Respondents : Mr.N.R.Elango,
Addl. Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

The petitioner, who was incarcerated at the Central Prison, Salem pursuant to an order dated 9.5.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Bootlegger, has preferred this writ petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 9.5.2007 in C.M.P.No.4/B.L./2007(M-1), to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

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2. On the basis of the complaint lodged by one Ganesan that on 23.4.2007 at 6.00 hours, after he consumed the arrack bought from the detenu, he felt burning sensation in eyes and stomach and vomitted and lost his consciousness, a case was registered in Crime No.593/2007 on the file of Prohibition Enforcement Wing, Tiruchengode, for offences punishable under Section 4(1)(i), 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act. The chemical analysis report of the samples taken from the arrack seized from the detenu disclosed that the arrack contained atropine of 5.8 mg per 100 ml. The detenu was arrested and produced before the Judicial Magistrate, Tiruchengode, for judicial remand.

3. Taking into consideration the above case as the ground case and finding that there are two adverse cases of alike nature on the file of the same police station, viz., in Crime Nos.317/2007 and 447/2007, the second respondent, having satisfied that there is a compelling necessity to detain the detenu, ordered his detention dubbing him as a Bootlegger.

4. The learned counsel for the petitioner challenges the impugned order of detention mainly on the ground of defective translation between the English and Tamil versions of the grounds of detention. He submits that in para 5 of the English version of grounds of detention, it is stated that,

> " ... I am also aware that there is real possibility of his coming out on bail by filing bail application before the same or higher court after lapse of time. ..."

whereas, in the Tamil version, it is stated that

> " ,,, அவர் அதே நீதிமன்றத்தில் அல்லது உயர் நீதிமன்றத்தில் முன் ஜாமீன் மனு செய்து ஜாமீனில் வெளியே வர உண்மையான சாத்தியக் கூறு உள்ளது என்பதையும் நான் அறிவேன். "

According to the learned counsel, when the detenu is already in judicial remand, there is no question of his coming out on anticipatory bail as stated in the Tamil version of the grounds of detention, which defective translation has deprived of his right to make an effective representation and hence, the order of detention vitiates.

5. Communicate is a strong word. It requires that sufficient knowledge of the basic facts consisting the grounds should be imparted effectively and fully to the detenue in writing in a language which he understands, so as to enable the detenue to make a purposeful and effective representation. Where the grounds are not properly translated, it would tantamount to not serving the grounds to the detenu and would thus vitiate the detention ex facie.

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6. In the instant case, as rightly pointed out by the learned counsel for the petitioner, it is apparent on the face of record that there is a defective translation between the English and Tamil versions of the grounds of detention, as referred to above and any failure to furnish properly the translated version of the grounds of detention would amount to denial of the right of being communicated the grounds and of being afforded the opportunity of making an effective representation against the order of detention. Hence, the order of detention is vitiated.

In the result, the order of detention is set aside and the habeas corpus petition is allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sra

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Chennai-9.

2. The District Magistrate
   and District Collector,
   Namakkal District
   Namakkal.

3.The Superintendent of Central Prison, Salem.

4. The Joint Secretary to Govt,
   Public Law & order Department, Fort St George, Chennai.

5. The Public Prosecutor, High Court, Chennai.

+ One cc to Mr. J. Saravanavel, Advocate sR 66770/07

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